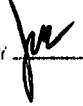


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2009 SEP 14 AM 10:50

CLERK US DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY  DEPUTY

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Attorney for Plaintiff(s)
LOURDES SANCHEZ

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

LOURDES SANCHEZ, an individual,

Plaintiffs,

v.

GREENPOINT MORTGAGE FUNDING,
INC., BANK OF AMERICA HOME
LOANS, AZTEC FORECLOSURE
CORPORATION, OCWEN LOAN
SERVICING, LLC., COASTAL EMPIRE
MORTGAGE, MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS, INC., as
nominee for RWPO III, LLC as beneficiary
and DOES 1-20,

Defendants.

Case No. **09 cv 2005 JM**

WMC

COMPLAINT FOR DAMAGES,
INJUNCTION, DECLARATORY & OTHER
EQUITABLE RELIEF

1. Intentional Misrepresentation
2. Breach of Fiduciary Duty
3. Breach of Covenant of Good Faith & Fair Dealing
4. Declaratory Relief
5. Quiet Title
6. Equal Credit Opportunity Act
7. Predatory Lending
8. Negligence
9. Usury
10. Accounting
11. Violations of TILA, HOEPA
12. Violation of RESPA
13. Violation of FCRA
14. Slander of Title
15. Violation CA Bus & Prof Code §17200
16. Violation of CA Civ Code § 2923.6
17. Violation of CA Civ. Code § 2923.5
18. Violation of CA Civ. Code § 1632

DEMAND FOR JURY

COMES NOW PLAINTIFF, LOURDES SANCHEZ, an individual, who alleges damages and seeks equitable relief against the Defendants, and each of them, as follows:



JURISDICTION & VENUE

1. Jurisdiction is conferred upon the court pursuant to Title 28, § 1331 as there is a federal question and the lawsuit is based on various federal statutes. Plaintiff rely on federal statutes 15 U.S.C.A. § 1691 et seq., 15 U.S.C.A. § 1601 et seq., 12 U.S.C.A. § 2601 et seq., and 15 U.S.C.A. § 1681, et seq. on which to base their claims. Venue is conferred as the property is located and all transactions took place and all parties reside within San Diego County, California, which is within the boundary of the United States District Court for the Southern District of California.

PRELIMINARY ALLEGATIONS

2. At all times relevant herein, Plaintiff LOURDES SANCHEZ is the owner of a single family residence in San Diego whose address is 2053 Miller Avenue, Escondido CA 92025 and is and was the borrower and Trustor on the promissory note (the "note") secured by a Deed of Trust ("TD" herein) in the loan transaction (the "loan") that is the subject of this complaint.

3. At all times relevant herein, Plaintiff is informed and believes that Defendant GREENPOINT MORTGAGE FUNDING, INC. is or are a corporation doing business in San Diego, California and is or was the original lender in the loan transaction that is the subject of this complaint.

4. At all times relevant herein, Plaintiff is informed and believes that Defendant OCWEN LOAN SERVICING, LLC and/or BANK OF AMERICA HOME LOANS is or are a limited liability company doing business in San Diego, California and is or was the current servicer/lender in the loan transaction that is the subject of this complaint.

5. At all times relevant herein, Plaintiff is informed and believes that Defendant AZTEC FORECLOSURE CORPORATION and/or MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., as nominee for RWPO III, LLC as Beneficiary is or was acting in the capacity of current Trustee of the TD that is the subject of this complaint.

6. At all times relevant herein, Plaintiff is informed and believes that DEFENDANT COASTAL EMPIRE MORTGAGE is or was acting in the capacity of Broker in the loan transaction that is the subject of this complaint.

7. At all times relevant herein, Plaintiff is informed and believes and thereon alleges that, DOES 1 through 20, inclusive, true names, identities and capacities, whether individual,

1 corporation, association, partnership or otherwise are at this time unknown to Plaintiff who therefore
2 sues said Defendants by such fictitious names and will so amend the complaint to show the true names
3 and capacities of such Doe Defendant(s) when the same are ascertained.

4 8. At all times relevant herein, Defendants are sued and were acting as principal(s),
5 employer(s) and/or the agent(s), servant(s) and employee(s) of said principal(s) or employer(s), and all
6 of the acts performed by them, or their agents, servants and employees, were performed with the
7 knowledge and under the control of said principal(s) or employer(s) and all such acts performed by such
8 agents, servants and/or employers, were performed within the course and scope of their authority.

9 **STATEMENT OF FACTS**

10 9. On or about July 12, 2007 Plaintiff purchased a single-family home located at 2053
11 Miller Avenue, Escondido CA 92025 ("Property") by borrowing \$460,000 (concurrent second of
12 \$86,200) from DEFENDANT GREENPOINT MORTGAGE FUNDING, INC., the funding lender. On
13 or about that date, Plaintiff executed a promissory note for the amount borrowed, which note was
14 secured by the TD.

15 10. Plaintiff financed the Property by obtaining financing from Defendants,
16 GREENPOINT MORTGAGE FUNDING, INC. and by using COASTAL EMPIRE MORTGAGE as a
17 broker.

18 11. Defendant OCWEN LOAN SERVICING, LLC., and/or BANK OF AMERICA
19 HOME LOANS is the current servicing company of said loan.

20 12. Based on a recent forensic audit of loan documents, Plaintiff is informed and believe
21 and, based thereon, alleges the following: The lender on this loan is GREENPOINT MORTGAGE
22 FUNDING, INC. and the Plaintiff hired COASTAL EMPIRE MORTGAGE as a broker to help her get
23 the best rate and loan program available. However, GREENPOINT and COASTAL EMPIRE conspired
24 to put Plaintiff into a high-cost loan that she did not want. Plaintiff should have been qualified for a low
25 cost fixed rate loan. GREENPOINT paid \$3,521.50 directly to COASTAL EMPIRE to "sell" the
26 Plaintiff an expensive and dangerous loan, at a much higher rate than she qualified for. This amount
27 paid to COASTAL EMPIRE was never disclosed to Plaintiff.
28

1 13. Based on a recent forensic audit of loan documents, Plaintiffs is informed and, based
2 thereon, alleges the following: Plaintiff paid DEFENDANT COASTAL EMPIRE \$13,008 to represent
3 her best interest and obtain the best loan possible. At the time of the loan application, the Plaintiff's
4 credit scores were 712, 709, and 724 which are slightly below the highest level of credit, but well above
5 average and considered high enough to qualify for a prime rate and term loan. DEFENDANT
6 GREENPOINT MORTGAGE never offered Plaintiff any other loan product that would have been more
7 beneficial to her despite her high credit scores. DEFENDANTS COASTAL EMPIRE and
8 GREENPOINT MORTGAGE illegally steered Plaintiff into a high-cost adjustable rate loan when she
9 should have been given a low cost fixed rate loan.

10 14. Based on a recent forensic audit of loan documents, Plaintiffs is informed and
11 believes and, based thereon, alleges the following: Plaintiff told DEFENDANT COASTAL EMPIRE
12 that she was not working and her husband was the only person making money. However,
13 DEFENDANT COASTAL EMPIRE only listed Plaintiff on the loan application and falsified Plaintiff's
14 income and employment section on the loan application. DEFENDANT COASTAL EMPIRE not only
15 falsified Plaintiff's income but also listed the amount as much higher than Plaintiff's husband's income.
16 The Plaintiff was not aware that DEFENDANT COASTAL EMPIRE falsified her employment or her
17 income.

18 15. Based on a recent forensic audit of loan documents, Plaintiff is informed and believes
19 and, based thereon, alleges the following: DEFENDANT GREENPOINT MORTGAGE FUNDING,
20 INC., violated its duty to verify that the broker did not defraud the Plaintiff. DEFENDANT
21 GREENPOINT MORTGAGE either knowingly or negligently placed the Plaintiff into an unaffordable
22 without any regard to Plaintiff's financial situation.

23 16. Based on a recent forensic audit of loan documents, Plaintiff is informed and
24 believes and, based thereon, alleges the following: GREENPOINT MORTGAGE was only concerned
25 about the points and fees that could be generated from this loan. GREENPOINT MORTGAGE engaged in
26 predatory lending by knowingly putting borrower into a loan where the Plaintiff had a chance to afford
27 the payments that were obligated through the mortgage.
28

1 17. Based on a recent forensic audit of loan documents, Plaintiff is informed and believes
2 and, based thereon, alleges the following: DEFENDANT COASTAL EMPIRE engaged in predatory
3 lending by falsifying the Plaintiff's income on her loan application.

4 18. Based on a recent forensic audit of loan documents, Plaintiff is informed and believes
5 and, based thereon, alleges the following: A significant discrepancy was found between the Annual
6 Percentage Rate (APR) and total finance charges that were disclosed to Plaintiff by GREENPOINT
7 MORTGAGE on the final truth in lending disclosure and the correct information that should have been
8 disclosed. The purpose of disclosing APR on the Truth in Lending documents is so the Plaintiff could
9 have been prepared for what would happen to her loan in the future. The most accurate way to calculate
10 the APR must be with the maximum interest rate allowed on the loan. Using any index value other than
11 the maximum rate will cause the potential borrower to make a decision about the loan based on
12 inaccurately optimistic interest rates. Here, GREENPOINT MORTGAGE was negligent in presenting
13 as fact an APR based on the (impossible) situation that the index value would never change over the life
14 of the loan. The APR was deceptively and fraudulently understate by 1.460% Plaintiff suffered
15 significant damages because the actual rate the Plaintiff has been charged on this loan is significantly
16 higher than the false APR quoted to her.

17 19. Based on a recent forensic audit of loan documents, Plaintiff is informed and believes
18 and, based thereon, alleges the following: The Federal Truth In Lending Disclosure Statements Findings
19 show that the "Finance Charge" and "The total of Payments" were deceptively and fraudulently
20 understated by \$336,072.29 and \$337,061.88. The "Amount financed" is fraudulently and deceptively
21 understated by \$989.59.

22 20. Based on a recent forensic audit of loan documents, Plaintiff is informed and believes
23 and, based thereon, alleges the following: The appraised value of the property was inflated. Here, the
24 seller of the property gave Plaintiff a \$15,000 credit to pay for her closing costs. The property value was
25 inflated by approximately \$15,000 and as a result GREENPOINT MORTGAE charged more money in
26 origination costs and was able to receive interest on the extra money it lent Plaintiff. Plaintiff suffered
27 because she over-paid for the property which took away from her equity and over time paid much more
28 in closing costs because of the financing costs plus the original amount given to the GREENPOINT

1 MORTGAGE. In this case, the closing costs were already very high and the broker, COASTAL
2 EMPIRE MORTGAGE received additional money from GREENPOINT MORTGAGE to sell the
3 Plaintiff a higher rate than she would otherwise qualify for.

4 21. Based on a recent forensic audit of her loan documents, Plaintiff is informed and
5 believes, and thereon alleges, the following: The Plaintiff's Debt to Income Ratio exceeds the maximum
6 allowed DTI ratio per all usual and customary underwriting guidelines for the ALT-A and/or Sub-Prime
7 Lending. Here, the Plaintiff was not actually employed at the time the loan was funded. Her husband
8 was employed but his real income was significantly lower than the amount listed on the loan application.
9 DEFENDANT COASTAL EMPIRE falsified Plaintiff's income on her application and did not follow
10 the lender's underwriting guidelines or perform a thorough analysis of Plaintiff's income.
11 DEFENDANT GREENPOINT MORTGAGE FUNDING was also negligent in verifying Plaintiff's
12 income.

13 22. Based on a recent forensic audit of loan documents, Plaintiff is informed and believes
14 and, based thereon, alleges the following: Because the Plaintiff was put into a loan that she did not
15 understand and with monthly payments that were completely unaffordable, she fell behind on her
16 payments. The Plaintiff does not really know who owns her mortgage and it appears that the ownership
17 of the note has been illegally transferred. The plaintiff only found this out when some entity claiming to
18 own her note threatened to foreclose on her property. DEFENDANT MORTGAGE ELECTRONIC
19 REGISTRATION SYSTEMS INC., MERS is identified in the deed of trust as the Beneficiary and
20 "nominee for the Lender, and its successors and assigns." The deed of trust also states that the "Lender
21 may from time to time appoint a successor trustee to any Trustee appointed hereunder by an instrument
22 executed and acknowledged by Lender." MERS filed an ineffective Substitution of Trustee in favor of
23 Aztec Foreclosure Corporation. Said "Substitution of Trustee" is ineffective pursuant to the Deed of
24 Trust and Requirements of California state law. As a business entity which has admitted under penalty
25 of perjury in court proceedings that it is not a "holder in due course" of any promissory note, does not
26 even store or hold promissory notes, and is merely a company that tracks alleged assignments of Deeds
27 of Trusts, and/or promissory notes (without recording said documents in the county in which the
28

1 property is located), MERS lacks standing to issue and record a Substitution of Trustee pursuant to
2 California law, as said business entity is not a "holder in due course."

3 23. Based on a recent forensic audit of loan documents, Plaintiff is informed and believes
4 and, based thereon, alleges the following: MERS simply does not have standing to foreclose, since it has
5 never originated a loan, never serviced a loan, never held or owned a loan and has never extended credit.
6 MERS does not acquire notes or the debts thereby represented for or without consideration. It has
7 neither the right nor the obligation to service the debts represented by the notes and/or secured by the
8 mortgages. Furthermore, the principal/agent (nominee) relationship between its members and MERS is
9 such that the "close-connectedness doctrine" prevents MERS from qualifying as a holder in due course
10 without notice, even if it did acquire some ownership interest in the debt.

11 24. Further, during the course of the loan application, the Notice of Right to Cancel in the
12 closing packet failed to state a transaction date or the expiration date of rescission period. Plaintiff also
13 failed to receive two copies of the Notice of Right to Cancel.

14 25. Plaintiff is a Spanish speaker and the loan with GREENPOINT MORTGAGE
15 FUNDING and COASTAL EMPIRE MORTGAGE was negotiated in Spanish. However, the loan
16 documents that Plaintiff was required to sign at the loan's closing were in English and were not
17 translated in writing in Spanish.

18 26. Any and all documents Plaintiff received also failed to include initial disclosure and
19 final disclosures, which include RESPA, TILA, ECOA and FCRA disclosures.

20 27. Further, in the Notice of Right to Cancel, neither the transaction date nor the expiry
21 of rescission period are completed, and were left blank.

22 28. Based on the foregoing facts, Plaintiff began having difficulty paying her mortgage.

23 29. As a result, MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. As
24 nominee for RWPO III, LLC as Beneficiary has executed a NOTICE OF TRUSTEE'S SALE which
25 indicates that Plaintiff's home will be sold at a foreclosure sale on or about September 17, 2009 at 10:00
26 AM at the South Entrance to the County Courthouse, 220 W. Broadway, San Diego, CA.

27 30. On or about September 2, 2009, Kent C. Wilson, Attorney for Plaintiff, sent a Notice
28 of Rescission of Plaintiff's loan by certified U.S. Mail, return receipt requested, to the original lender of

1 Plaintiff's Loan, GREENPOINT MORTGAGE FUNDING INC., with a copy to the Trustee and/or
2 Servicer, Defendant BANK OF AMERICA HOME LOANS, AZTEC FORECLOSURE
3 CORPORATION. Said Notice indicated that Plaintiff's loan was rescinded for violations of federal and
4 state laws against predatory lending, but not limited to, the Federal Truth in Lending Act and California
5 Civil Code section 1632. Said notice further demanded that any Notice of Trustee's Sale be retracted.
6 As a result of said notice, Plaintiff alleges that the TD has been cancelled and is void and that Defendant
7 AZTEC FORECLOSURE CORPORATION and/or MERS no longer has any right to sell Plaintiff's
8 home.

9 **FIRST CLAIM FOR RELIEF**
10 **(Intentional Misrepresentation)**

11 COMES NOW PLAINTIFF and for a separate and distinct CLAIM FOR RELIEF for
12 Intentional Misrepresentation against Defendants, allege as follows:

13 31. Plaintiff repeats and repleads paragraphs 1 through 22 and incorporates the
14 allegations by reference as though fully set-forth herein.

15 32. Based on Defendant GREENPOINT MORTGAGE and/or COASTAL EMPIRE
16 MORTGAGE, failure to verify Plaintiff's income, Plaintiff was able to obtain the subject loan, though
17 GREENPOINT and/or COASTAL EMPIRE, was clearly aware that Plaintiff could not afford said loan.
18 Despite that GREENPOINT MORTGAGE and/or COASTAL EMPIRE, put Plaintiff into a loan that she
19 could not afford.
20

21 33. Further, during the loan application process, Defendants GREENPOINT
22 MORTGAGE and/or COASTAL EMPIRE, failed to inform Plaintiff of her right to rescind, along with
23 failing to disclose numerous federal safeguards in the application process.
24

25 34. Defendants GREENPOINT MORTGAGE and/or COASTAL EMPIRE, further failed
26 to include the Initial Good Faith Estimate or an Initial TIL within the 3 business days required.
27
28

1 35. Said Defendants GREENPOINT MORTGAGE and COASTAL EMPIRE made the
2 above referenced false representations knowing of their falsity. Further, above referenced fraudulent
3 concealments by Defendants were done knowingly.

4 36. Said Defendants intended that Plaintiff would rely on said false representations.

5 37. Said false representations and fraudulent concealments by Defendants were material.

6 38. Plaintiff reasonably relied on the above referenced false representations of said
7 Defendants.
8

9 39. Plaintiff is informed and believes and thereon alleges that as a legal result of the
10 misrepresentation of Defendants, Plaintiff has suffered severe emotional distress in an amount in excess
11 of \$500,000 or to be proven at trial.
12

13 40. Defendants, and each of them, committed the acts herein alleged maliciously,
14 fraudulently, and oppressively, with the reckless disregard of Plaintiff's rights. Conduct by the
15 Defendants, and each of them, amounted to malice and was carried out in a despicable, deliberate, cold,
16 callous and intentional manner thereby entitling Plaintiff to recover punitive damages from Defendants
17 in an amount according to proof.
18

19 ALL FOR WHICH PLAINTIFF SEEKS DAMAGES AND OTHER RELIEF AS PRAYED.

20 **SECOND CLAIM FOR RELIEF**

21 **(Breach of Fiduciary Duty)**

22 COMES NOW PLAINTIFF, and for a separate and distinct CLAIM FOR RELIEF for Breach
23 of Fiduciary Duty against Defendants, allege as follows:

24 41. Plaintiff repeats and repleads paragraphs 1 through 40 and incorporates the
25 allegations by reference therein as though set forth below.

26 42. By engaging in the conduct hereto described, and in putting Plaintiff into a loan it
27 knew he could not afford, Defendant GREENPOINT MORTGAGE and COASTAL EMPIRE breached
28 fiduciary duties it owed to Plaintiff.

43. As described hereinabove, DEFENDANT GREENPOINT MORTGAGE and/or COASTAL EMPIRE, intentionally failed to verify Plaintiff's income and failed to provide all relevant and material disclosures, causing Plaintiff to be unable to pay her mortgage and ultimately be in the position of being evicted from her home.

44. DEFENDANT GREENPOINT MORTGAGE and/or COASTAL EMPIRE placed Plaintiff in her current loan without regard for other loans that may have suited Plaintiff better.

45. DEFENDANT GREENPOINT MORTGAGE and/or COASTAL EMPIRE placed Plaintiff in a loan knowing that it was reasonably foreseeable that Plaintiff would incur bankruptcy as a result of said loan.

46. DEFENDANT GREENPOINT MORTGAGE and/or COASTAL EMPIRE, placed Plaintiff in a loan when the real estate market was in a free fall, and it was easy to foresee that such market conditions would continue, endangering the Plaintiff's financial stake in her home.

47. Plaintiff is informed and believes and thereon alleges that as a legal result of Defendant's conduct, Plaintiff has suffered economic damages in an amount in excess of \$500,000 or to be proven at trial.

48. Plaintiff is informed and believes that as a further legal result of Defendant's conduct, Plaintiff has suffered severe emotional distress in an amount in excess of \$500,000 or to be proven at trial.

49. Defendants, and each of them, committed the acts herein alleged maliciously, fraudulently, and oppressively, with reckless disregard of Plaintiff's rights. Conduct by the Defendants, and each of them, amounted to malice and was carried out in a despicable, deliberate, cold, callous and intentional manner thereby entitling Plaintiff to recover punitive damages from Defendants in an amount according to proof.

ALL FOR WHICH PLAINTIFF SEEKS DAMAGES AND OTHER RELIEF AS PRAYED.

THIRD CLAIM FOR RELIEF

(Breach of Covenant of Good Faith and Fair Dealing)

COMES NOW PLAINTIFF, and for a separate and distinct CLAIM FOR RELIEF for Breach of Covenant of Good Faith and Fair Dealing against Defendants, allege as follows:

1 50. Plaintiff repeats and repleads paragraphs 1 through 49 and incorporates the
2 allegations by reference therein as though set forth below.

3 51. At all pertinent times, the agreements entered into between Plaintiff and
4 GREENPOINT MORTGAGE and COASTAL EMPIRE MORTGAGE, contained an implicit covenant
5 of good faith and fair dealing requiring defendants to act honestly and in good faith in the performance
6 and enforcement of the contract(s).

7 52. The conduct of GREENPOINT MORTGAGE and/or COASTAL EMPIRE, in failing
8 to verify Plaintiff's income, overstating her income on the application, and failing to disclose material
9 information in the loan application process constitutes a breach of the covenant of good faith and fair
10 dealing.

11 53. Plaintiff is informed and believes and thereon alleges that as a legal result of
12 GREENPOINT MORTGAGE and/or COASTAL EMPIRE, Plaintiff has suffered economic damages in
13 an amount in excess of \$500,000 or to be proven at trial.

14 54. DEFENDANT GREENPOINT MORTGAGE and/or COASTAL EMPIRE, and each
15 of them, committed the acts herein alleged maliciously, fraudulently, and oppressively, with reckless
16 disregard of Plaintiff's rights. Conduct by the Defendants, and each of them, amounted to malice and
17 was carried out in a despicable, deliberate, cold, callous and intentional manner thereby entitling
18 Plaintiff to recover punitive damages from Defendants in an amount according to proof.

19 ALL FOR WHICH PLAINTIFF SEEKS DAMAGES AND OTHER RELIEF AS PRAYED.

20 **FOURTH CLAIM FOR RELIEF**

21 **(Declaratory Relief)**

22 COMES NOW PLAINTIFF, and for a separate and distinct CLAIM FOR RELIEF for
23 Declaratory Relief against Defendants, allege as follows:

24 55. Plaintiff repeats and repleads paragraphs 1 through 54 and incorporates the
25 allegations by reference therein as though set forth below.

26 56. An actual controversy has arisen and now exists between Plaintiff and Defendants
27 concerning their respective rights and duties pertaining to the subject property and the described
28 transactions. Defendants contend that a breach of the obligation secured by the deed of trust has

1 occurred in that Plaintiff failed to make her monthly mortgage payments and thus through the
 2 foreclosure process are able to sell the property. Plaintiff contends that she is able to retain possessory
 3 rights to the property based on the intentional misstatement of income and lack of disclosure of material
 4 information in the loan application process. Plaintiff further contends that she has a right to rescind the
 5 loan, note, and TD based upon the violations of state and federal laws against predatory lending alleged
 6 in this complaint, including but not limited to, intentional misrepresentation, violations of California
 7 Financial Code Section § 4970, et. Seq., specified in his Seventh Claim for Relief and TILA violations
 8 specified in his Eleventh Claim for Relief. Plaintiff further contends that said right of rescission applies
 9 to all named Defendants and that, upon rescission, none of the named Defendants will have any interest
 10 in the TD that will support a foreclosure against Plaintiff's home or to substitute Defendant MERS
 11 and/or AZTEC FORECLOSURE CORPORATION as trustee of the TD. For those reasons, Plaintiff
 12 contends that Defendant MERS and/or AZTEC FORECLOSURE CORPORATION, lack standing to
 13 sell Plaintiff's home at a foreclosure sale.

14 57. Plaintiff desires a judicial determination and declaration of the rights of the parties.
 15 Such a determination is appropriate at this time so that Plaintiff may determine his rights and duties.

16 ALL FOR WHICH PLAINTIFF SEEKS DAMAGES AND OTHER RELIEF AS PRAYED.

17 **FIFTH CLAIM FOR RELIEF**

18 **(Quiet Title)**

19 COMES NOW PLAINTIFF, and for a separate and distinct CLAIM FOR RELIEF for Quiet
 20 Title against Defendants, allege as follows:

21 58. Plaintiff repeats and repleads paragraphs 1 through 57 and incorporates the
 22 allegations by reference therein as though set forth below.

23 59. Plaintiff is the owner in fee of title to property commonly known as 2053 Miller
 24 Avenue Escondido, CA 92025. The basis of Plaintiff's title is a grant deed to the property. The Legal
 25 Description of said property is as follows:

26 APN: 236-333-40

27 LEGAL DESCRIPTION: THE NORTHEASTERLY HALF OF THE SOUTHESTERLY 264 FEET OF
 28 LOT 4 IN BLOCK 3 OF HOMELAND ACRES ADDITION TO ESCONDIDO, IN THE CITY OF

1 ESCONDIDO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO THE MAP
 2 THEREOF NO. 1205, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO
 3 COUNTY, SEPTEMBER 1, 1909.

4 EXCEPTING THEREFROM THE NORTHEASTERLY 241.68 FEET THEREOF.

5 60. DEFENDANTS AZTEC FORECLOSURE CORPORATION and/or MERS claim
 6 and assert interests in the above-described real property which are adverse to Plaintiff. The claims of
 7 defendants are based on the deeds of trust.

8 61. The deeds of trust are invalid and void as to Plaintiff's property because Plaintiff is
 9 entitled to offsets against the promissory notes that are secured by the deeds of trusts, and these offsets
 10 are greater in amount than the sum that would otherwise be due under the promissory notes, and/or
 11 Plaintiff is entitled to rescission of the promissory notes and deeds of trust such that Defendant's claim
 12 to the property is released.

13 62. Plaintiff seeks to quiet title as of the date the complaint is filed.

14 ALL FOR WHICH PLAINTIFF SEEKS DAMAGES AND OTHER RELIEF AS PRAYED.

15 **SIXTH CLAIM FOR RELIEF**

16 **(Violation of Equal Credit Opportunity Act)**

17 COMES NOW PLAINTIFF, and for a separate and distinct CLAIM FOR RELIEF for
 18 Violation of Equal Credit Opportunity Act against Defendants, allege as follows:

19 63. Plaintiff repeats and repleads paragraphs 1 through 62 and incorporates the
 20 allegations by reference therein as though set forth below.

21 64. The term "adverse action" as defined in the Equal Credit Opportunity Act, 15 U.S.C.
 22 § 1691(d)(6), means a denial or revocation of credit, a change in the terms of an existing credit
 23 arrangement, or a refusal to grant credit in substantially the amount or on substantially the same terms
 24 requested. Such term does not include a refusal to extend the additional credit under an existing credit
 25 arrangement where the applicant is delinquent or otherwise in default, or where such additional credit
 26 would exceed a previously established credit limit.

27 65. Plaintiff is informed and believes, and thereon alleges, that in the course and conduct
 28 of making the mortgage to Plaintiff, Defendants discriminated against Plaintiff on the basis of race,

1 color, religion, national origin, sex, marital status, age, receipt of public assistance or because Plaintiff
2 has exercised any of her rights as detailed in the Equal Credit Opportunity Act, all in violation of 15
3 U.S.C. § 1691(a).

4 66. Plaintiff is informed and believes, and thereon alleges, that in the course and conduct
5 of making the mortgage to Plaintiff, Defendants failed to, within 30 days of receipt of a completed
6 application for credit, notify the Plaintiff of its action on the application in violation of 15 U.S.C. §
7 1691(d)(1).

8 67. Plaintiff is informed and believes, and thereon alleges, that in the course and conduct
9 of making the mortgage to Plaintiff, Defendants failed to, after taking an adverse action on Plaintiff's
10 request, provide a statement in writing of the reasons as to why an adverse action was taken in violation
11 of 15 U.S.C. § 1691(d)(2).

12 68. As a result of Defendant's aforementioned violations, Plaintiff requests actual
13 damages, plus reasonable attorney's fees and costs which were incurred, in addition to other relief
14 Plaintiff may be entitled.

15 69. Defendants, and each of them, committed the acts herein alleged maliciously,
16 fraudulently, and oppressively, with the reckless disregard of Plaintiff's rights. Conduct by the
17 Defendants, and each of them, amounted to malice and was carried out in a despicable, deliberate, cold,
18 callous and intentional manner thereby entitling Plaintiff to recover punitive damages from Defendants
19 in an amount according to proof.

20 ALL FOR WHICH PLAINTIFF SEEKS DAMAGES AND OTHER RELIEF AS PRAYED.

21 **SEVENTH CLAIM FOR RELIEF**

22 **(Violation of California Financial Code § 4970 et seq.)**

23 COMES NOW PLAINTIFF, and for a separate and distinct CLAIM FOR RELIEF for
24 Violation of Predatory Lending laws against Defendants, allege as follows:

25 70. Plaintiff repeats and repleads paragraphs 1 through 69 and incorporates the
26 allegations by reference therein as though set forth below.

27 71. Plaintiff is informed and believes and thereon alleges that the conduct of Defendants
28 DEFENDANT GREENPOINT MORTGAGE and/or COASTAL EMPIRE, was in violation of

California's predatory lending laws, as set forth in Financial Code §4970 et. seq. Said Defendant did not make all required disclosures as required by §4973(f). Further, said Defendant did not reasonably believe that Plaintiff had the ability to repay the loan, and steered Plaintiff into accepting a loan that was risky.

72. As the legal result thereof, Plaintiff is entitled to special damages and general damages, in an amount currently unknown but according to proof at the time of trial.

73. Plaintiff, as the legal result of the actions of the Defendants alleged herein, is entitled to reasonable attorney's fees and costs as the prevailing party pursuant to contract.

74. Defendants DEFENDANT GREENPOINT MORTGAGE and/or COASTAL EMPIRE, and each of them, committed the acts herein alleged maliciously, fraudulently, and oppressively, with the reckless disregard of Plaintiff's rights. Conduct by the Defendants, and each of them, amounted to malice and was carried out in a despicable, deliberate, cold, callous and intentional manner thereby entitling Plaintiff to recover punitive damages from Defendants in an amount according to proof.

ALL FOR WHICH PLAINTIFF SEEKS DAMAGES AND OTHER RELIEF AS PRAYED.

EIGHTH CLAIM FOR RELIEF

(Negligence)

COMES NOW PLAINTIFF, and for a separate and distinct CLAIM FOR RELIEF for Negligence against Defendants, allege as follows:

75. Plaintiff repeats and repleads paragraphs 1 through 74 and incorporates the allegations by reference therein as though set forth below.

76. Defendants, GREENPOINT MORTGAGE and/or COASTAL EMPIRE as named herein, owed a duty of due care to the Plaintiff. Such duty was breached by negligently placing Plaintiff in the above described loans.

77. As the legal result of such breach, Plaintiff has suffered both monetary and non monetary damages.

78. As the legal result thereof, Plaintiff is entitled to special damages and general damages, in an amount currently unknown but according to proof at trial.

NINTH CLAIM FOR RELIEF

COMES NOW PLAINTIFF, and for a separate and distinct CLAIM FOR RELIEF for Usury against Defendants, allege as follows:

80. Plaintiff repeats and repleads paragraphs 1 through 79 and incorporates the allegations by reference therein as though set forth below.

81. As the result of the loans being in violation of California and Federal lending practices violation for predatory lending as alleged above and herein below, such loans are void and the annual interest rate on the loan is usurious in violation of section 1(1) of article XV of the California Constitution, which provides that the interest rate on a loan primarily for personal, family, or household purposes may not exceed 10% per annum, or in violation of section 1(2) of article XV of the California Constitution, which provides that the interest rate on a loan other than one primarily for personal, family, or household purposes may not exceed the greater of 10% per annum or 5% per annum plus the rate established by the Federal Reserve Bank of San Francisco on advances to member banks on the 25th day of the month preceding the earlier of the date of execution of the contract to make the loan or forbearance, or the date of making the loan or forbearance.

82. Within 2 years preceding the bringing of this action, Plaintiff made payments to defendant GREENPOINT MORTGAGE and/or BANK OF AMERICA HOME LOANS, and/or OCWEN LOAN SERVICING or its successor on Notes for each loan.

83. An actual controversy presently exists between the parties as to whether the loan is usurious and as to the amount of principal due on the loan, in that Plaintiff contends as alleged above that the loan is usurious and that all the interest paid on the loan to date and in the future should be credited to the principal, that under Civil Code § 1916-3, subd. (a) interest paid within the year preceding the filing of this action should be trebled and credited to principal, and that defendant is

1 barred from accelerating or enforcing Plaintiff's obligation for any breach in payment of interest, while
2 defendant contends the opposite.

3 84. Plaintiff desires a judicial determination of whether the loan is usurious and as to the
4 principal amount due, if any, on the loan as of the date of trial; otherwise, Plaintiff will be required to
5 pay the loan in full and then sue for money had and received and, if defendant seeks to accelerate or
6 enforce the loan for Plaintiff's default in paying interest, Plaintiff will be compelled to bring an action to
7 enjoin such acts.

8 85. A judicial declaration is necessary and appropriate at the present time under all the
9 circumstances so that Plaintiff may ascertain her rights and duties as to payment of the loan from
10 defendant.

11 86. Plaintiff is entitled to recover attorney's fees incurred in bringing and pursuing this
12 action against defendant under the provisions of the loan agreement with defendant.

13 ALL FOR WHICH PLAINTIFF SEEKS DAMAGES AND OTHER RELIEF AS PRAYED.

14
15 **TENTH CLAIM FOR RELIEF**

16 **(Accounting)**

17 COMES NOW PLAINTIFF, and for a separate and distinct CLAIM FOR RELIEF for
18 Accounting against Defendants, allege as follows:

19 87. Plaintiff repeats and repleads paragraphs 1 through 86 and incorporates the
20 allegations by reference therein as though set forth below.

21 88. The amount of money due, if any, from Plaintiff to Defendants is unknown to
22 Plaintiff and cannot be determined without an accounting.

23 **ELEVENTH CLAIM FOR RELIEF**

24 **(Violations of TILA and HOEPA)**

25
26 COMES NOW PLAINTIFF, and for a separate and distinct CLAIM FOR RELIEF for
27 Violation of TILA and HOEPA against Defendants, allege as follows:
28

1 89. Plaintiff repeats and repleads paragraphs 1 through 88 and incorporates the
2 allegations by reference therein as though set forth below.

3 90. Plaintiff is informed and believes, and thereon alleges, that Defendants, in concert
4 with its agents, have engaged in acts or practices in violation of the Truth in Lending Act ("TILA"), 15
5 U.S.C. §§ 1601-1666j, as amended, including, but not limited to, the Home Ownership and Equity
6 Protection act of 1994 ("HOEPA"), as amended, and TILA's implementing Regulation Z, 12 C.F.R.
7 §226, as amended.

8 91. The terms "amount finance," "annual percentage rate," "closed-end credit,"
9 "consumer," "consumer credit," "consummation," "credit," "creditor," "dwelling," "finance charge,"
10 "mortgage," "open-end credit," "payment schedule," "points and fees," "residential mortgage
11 transaction," "reverse mortgage transaction," "security interest," and "total of payments" are defined as
12 set forth in Sections 103 and 128 of TILA, 15 U.S.C. §§ 1602 and 1638, and Sections 226.2, 226.4,
13 226.18, 226.22, 226.32, and 226.33 of Regulation Z, 12 C.F.C. §§ 226.2, 226.4, 226.18, 226.22, 226.32,
14 and 226.33.

15 92. The term "HOEPA" means Home Ownership and Equity Protection Act of 1994
16 which, inter alia, amended TILA by adding Section 129 of TILA, 15 U.S.C. § 1639, and is implemented
17 by, inter alia, Sections 226.31 and 226.32 of Regulation Z, 12 C.F.R. §§ 226.31 and 226.32. HOEPA,
18 which took effect on October 1, 1995, provides special protections for consumers who obtain high-rate
19 or high-fee loans secured by their principal dwellings by requiring creditors to provide certain material
20 information at least three days before the loan is consummated prohibiting the use of certain loan terms,
21 and barring specified practices.

22 93. The term "HOEPA mortgage loan" means a consumer credit transaction
23 consummated on or after October 1, 1995, that is secured by the consumer's principal dwelling, other
24 than certain designated exceptions, in which: (1) the annual percentage rate at consummation of the
25 transaction will exceed by more than 10 percentage points the yield on Treasury securities having
26 comparable periods of maturity to the loan maturity as of the 15th day of the month immediately
27 preceding the month in which the application for the extension of credit is received by the creditor; or
28 (2) the total points and fees payable by the consumer at or before loan closing will exceed the greater of

1 8% of the total loan amount or \$400 (adjusted annually by the Board of Governors of the Federal
2 Reserve System ("FRB") on January 1 by the annual percentage change in the Consumer Price Index
3 that was reported on June 1 of the preceding year), which is covered by HOEPA, pursuant to Section 129
4 of TILA, 15 U.S.C. § 1639, and Section 226.32 of Regulation Z, 12 C.F.R. § 226.32. As used herein, the
5 "total loan amount" is calculated as described in Section 226.32(a)(1)(ii)-1 of the FRB Official Staff
6 Commentary on Regulation Z, 12 C.F.R. § 226.32(a)(1)(ii)-1, Supp.1.

7 94. The term "Regulation Z" means the regulation of the FRB promulgated to implement
8 TILA and HOEPA, 12 C.F.R. 226, as amended. The term also includes the FRB Official Staff
9 Commentary on Regulation Z, 12 C.F.R. 226, Supp.1, as amended.

10 95. The term "TILA" means the Truth in Lending Act, 15 U.S.C. §§ 1601-1666j, as
11 amended. TILA, which took effect on July 1, 1969, is intended to promote the informed use of
12 consumer credit by requiring creditors to disclose credit terms and costs, requiring additional disclosures
13 for loans secured by consumers' homes, and permitting consumers to rescind certain transactions that
14 involve their principal dwellings.

15 96. Plaintiff is informed and believe, and thereon allege, that Defendants GREENPOINT
16 MORTGAGE, and/or BANK OF AMERICA HOME LOANS and/or OCWEN LOAN SERVICING is a
17 "creditor," as that term is defined in Section 103(f) of TILA, 15 U.S.C. § 1602(f), and Section
18 226.2(a)(17) of Regulation Z, 12 C.F.R. § 226.2(1)(17), and therefore is required to comply with
19 applicable provisions of TILA, HOEPA, and Regulation Z. The loan defendants made to Plaintiff in this
20 action was a HOEPA mortgage loan.

21 97. Plaintiff is informed and believes, and thereon alleges, that in the course and conduct
22 of offering and making the HOEPA mortgage loan to Plaintiff, defendants violated the requirements of
23 HOEPA and Regulation Z by failing to make required disclosure in the following respects by:

24 (a) failing to disclose in writing the following notice:

26 You are not required to complete the agreement merely because you have received
27 these disclosures or have signed a loan application. If you obtain the loan, the lender
28 will have a mortgage on your home. You could lose your home, and any money you
have put into it, if you do not meet your obligations under the loan, in violation of

Section 129(a)(1) of TILA, 15 U.S.C. § 1639(a)(1), and Section 226.32(c)(1) of Regulation Z, 12 C.F.R. § 226.32(C)(1).

(b) failing to disclose, or accurately disclose terms, including new disclosures when terms changed prior to consummation per 12 C.F.R. § 226.31 (c)(1)(i):

(i) the annual percentage rate, in violation of Section 129(a)(2) of TILA, 15 U.S.C. § 1639(a)(2), and Section 226.32(c)(2) of Regulation Z, 12 C.F.R. § 226.32 (c)(2);

(ii) the regular payment amount and any balloon payment, in violation of 129(a)(2) of TILA, 15 U.S.C. § 1639(a)(2), and Section 226.32(c)(5) of Regulation Z, 12 C.F.R. § 226.32 (c)(5);

(iii) the amount borrowed, in violation of Section 129(a)(2) of TILA, 15 U.S.C. § 1639(a)(2), and Section 226.32(c)(5) of Regulation Z, 12 C.F.R. § 226.32(c)(5);

(c) Failing to make the disclosures described in Paragraph 30(a) and (b) above clearly and conspicuously in writing at least three business days prior to consummation of a HOEPA mortgage loan transaction, in violation of Section 129(b)(1) of TILA, 15 U.S.C. § 1639(b)(1), and Section 226.31(b) and (c)(1) of Regulation Z, 12 C.F.R. § 226.31(b) and (C)(1).

98. Plaintiff is informed and believes, and thereon alleges, that in the course and conduct of offering and making the HOEPA mortgage loan to Plaintiff, defendants violated the requirements of HOEPA and Regulation Z by using prohibited loan terms, in the following respects by:

(a) including a prohibited "balloon payment" provision, in violation of Section 129(e) of TILA, 15 U.S.C. § 1639(e), and Section 226.32(d)(1) of Regulation Z, 12 C.F.R. § 226.32 (D)(1); and

(b) including a prohibited "increased interest rate" after default provision, in violation of Section 129(d) of TILA, 15 U.S.C. § 1639(d), and Section 226.32(d)(4) of Regulation Z, 12 C.F.R. § 226.32(d)94).

99. Plaintiff is informed and believe, and thereon allege, that in the course and conduct of offering and making the HOEPA mortgage loan to Plaintiff, defendants violated the requirements of HOEPA and Regulation Z prohibiting asset-based lending, by engaging in a pattern or practice of

1 extending such credit to Plaintiff, a consumer, based on Plaintiff's collateral rather than considering
2 Plaintiff's current and expected income, current obligations, and employment status to determine
3 whether the consumer is able to make the scheduled payments to repay the obligation, in violation of
4 Section 129(h) of TILA, 15 U.S.C. § 1639(h), and Section 226.32(e)(1) of Regulation Z, 12 C.F.R. §
5 226.32(e)(1).
6

7 100. Plaintiff has suffered, and will continue to suffer, substantial injury as a result of
8 defendants' violations of HOEPA and TILA, as set forth above.

9 101. Plaintiff is informed and believes, and thereon alleges, that as a result of the conduct
10 of defendants, Plaintiff is entitled to rescind the loan transaction, recover certain amounts already paid,
11 including interest, finance charges and closing costs, offset these damages against amounts owing on the
12 loan, and collect statutory damages and attorney fees.
13

14 ALL FOR WHICH PLAINTIFF SEEKS DAMAGES AND OTHER RELIEF AS PRAYED.

15 **TWELFTH CLAIM FOR RELIEF**
16 **(Violation of RESPA)**

17 COMES NOW PLAINTIFF, and for a separate and distinct CLAIM FOR RELIEF for
18 Violation of RESPA against Defendants, allege as follows:

19 102. Plaintiff repeats and repleads paragraphs 1 through 101 and incorporates the
20 allegations by reference therein as though set forth below.

21 103. In creating the loan Defendants have engaged in acts or practices in violation of the
22 Real Estate Settlement Procedures Act (RESPA), 12 U.S.C.A. § § 2601 et seq.

23 104. The terms "federally related mortgage loan," "creditor," "thing of value," "settlement
24 services," "title insurance company," "person," "Secretary," "affiliated business arrangement," and
25 "associate" are defined as set forth in 12 U.S.C.A. § 2602.

26 105. The term "RESPA loan" means any loan (other than temporary financing such as a
27 construction loan) which is secured by a first or subordinate lien on residential real property (including
28

individual units of condominiums and cooperatives) designed principally for the occupancy of from one to four families, including any such secured loan, the proceeds of which are used to prepay or pay off an existing loan secured by the same property; and is made in whole or in part by any lender the deposits or accounts of which are insured by any agency of the Federal Government, or is made in whole or in part by any lender which is regulated by any agency of the Federal Government, or is made in whole or in part, or insured, guaranteed, supplemented, or assisted in any way, by the Secretary or any other officer or agency of the Federal Government or under or in connection with a housing or urban development program administered by the Secretary or a housing or related program administered by any other such officer or agency; or is intended to be sold by the originating lender to the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, or a financial institution from which it is to be purchased by the Federal Home Loan Mortgage Corporation; or is made in whole or in part by any "creditor", as defined in section 1602(f) of Title 15, who makes or invests in residential real estate loans aggregating more than \$1,000,000 per year. 12 U.S.C.A. § 2602 (A) & (B)(i)(ii)(iii)(iv).

106. Plaintiff is informed and believes, and thereon alleges, that in the course and conduct of offering and making the RESPA mortgage loan to Plaintiff, defendant GREENPOINT MORTGAGE and/or COASTAL EMPIRE violated the requirements of RESPA by failing to do the following:

- (a) Initial Good Faith Estimate;
- (b) Final Good Faith Estimate;
- (c) Notice of Assignment, Sale or Transfer of Servicing Rights;
- (d) Escrow Account Disclosure

107. Plaintiff is informed and believes, and thereon allege, that in the course and conduct of offering and making the RESPA mortgage loan to Plaintiff, defendants violated the requirements of RESPA, 12 U.S.C.A. § 2607 by partaking in the following:

- (a) providing a person with a fee, kickback or thing of value pursuant to any agreement or understanding, oral or otherwise, that business incident to or a part of a real estate settlement service involving a federally related mortgage loan shall be referred to any person.

(b) providing a fee portion, split or percentage of any charge made or received for the rendering of a real estate settlement service in connection with a transaction involving a federally related mortgage loan other than for services actually performed.

108. Plaintiff is informed and believes, and thereon alleges, that in the course and conduct of offering and making the RESPA mortgage loan to Plaintiff, defendants violated the requirements of RESPA, 12 U.S.C.A. § 2608 by partaking in the following:

(a) requiring, directly or indirectly, as a condition to selling the property, that title insurance covering the property be purchased by the buyer from any particular title company.

109. Plaintiff is informed and believes, and thereon alleges, that as a result of the conduct of defendants, Plaintiff is entitled to rescind the loan transaction, recover certain amounts already paid, including interest, finance charges and closing costs, offset these damages against amounts owing on the loan, and collect statutory damages and attorney fees.

ALL FOR WHICH PLAINTIFF SEEKS DAMAGES AND OTHER RELIEF AS PRAYED.

THIRTEENTH CLAIM FOR RELIEF
(Violation of FCRA)

COMES NOW PLAINTIFF, and for a separate and distinct CLAIM FOR RELIEF for Violation of FCRA against Defendants, allege as follows:

110. Plaintiff repeats and repleads paragraphs 1 through 109 and incorporates the allegations by reference therein as though set forth below.

111. In creating the loan Defendants have engaged in acts or practices in violation of the Fair Credit Reporting Act (FCRA), 15 U.S.C.A. § § 1681 et seq.

112. The terms "person," "consumer," "consumer report," "investigative consumer report," "consumer reporting agency," "file," "employment purposes," "medical information," "overdue support," "State or local child support enforcement agency," "adverse action," "firm offer of credit or insurance," "credit or insurance transaction that is not initiated by the consumer," "State," "active duty military consumer," "fraud alert," "active duty alert," "identity theft," "new credit plan," "card issuer," "credit card," "debit card," "account," "electronic fund transfer," "financial institution," "Federal

1 banking agency," "reseller," "Commission," "nationwide specialty consumer reporting agency," are
2 defined as set forth in 15 U.S.C.A. § 1681a.

3 113. Congress enacted the Fair Credit Reporting Act to require that consumer reporting
4 agencies adopt reasonable procedures for meeting the needs of commerce for consumer credit,
5 personnel, insurance, and other information in a manner which is fair and equitable to the consumer,
6 with regard to the confidentiality, accuracy, relevancy, and property utilization of such information in
7 accordance with the requirements of the subchapter. 15 U.S.C.A. § 1681(b).

8 114. Plaintiff is informed and believe, and thereon allege, that in the course and conduct of
9 offering and making the above-noted mortgage to Plaintiff, defendants violated numerous provisions of
10 FCRA, 15 U.S.C.A. § 1681 et seq. as follows:

- 11 (a) Failure to provide credit scores;
- 12 (b) Failure to provide Notice to Home Loan Applicant;
- 13 (c) Failure to provide Notices of Adverse Action;
- 14 (d) Failure to provide Risk-Based Pricing Notice;
- 15 (e) Failure to make Investigative Consumer Report Disclosure.

16 115. Plaintiff is informed and believes, and thereon alleges, that as a result of the conduct
17 of defendants, Plaintiff is entitled to rescind the loan transaction, recover certain amounts already paid,
18 including interest, finance charges and closing costs, offset these damages against amounts owing on the
19 loan, and collect statutory damages and attorney fees.

20 ALL FOR WHICH PLAINTIFF SEEKS DAMAGES AND OTHER RELIEF AS PRAYED.

21 **FOURTEENTH CLAIM FOR RELIEF**

22 **(Slander of Title)**

23 COMES NOW PLAINTIFF, and for a separate and distinct CLAIM FOR RELIEF for Slander
24 of Title against Defendants, allege as follows:

25 116. Plaintiff repeats and repleads paragraphs 1 through 106 and incorporates the
26 allegations by reference therein as though set forth below.

27 117. Plaintiff is informed and believes that Defendants slandered title to the
28 aforementioned property as the facts herein describe.

118. Defendants communicated to a third party a false statement that was derogatory to the Plaintiff's title with actual malice, and intention to cause harm, thus causing special damages.

119. As mentioned hereinabove, the Defendants improperly attempted to sell Plaintiff's home through a foreclosure sale and have recorded and/or caused to be recorded documents with the San Diego County Recorder's Office which contain false statements and representations, as outlined more particularly above.

120. Based on the foregoing acts by Defendants, and all of them as mentioned herein, Plaintiff requests reasonable attorney's fees and costs, including but not limited to a request for special damages, to be proven according to proof at trial.

ALL FOR WHICH PLAINTIFF SEEKS DAMAGES AND OTHER RELIEF AS PRAYED.

FIFTEENTH CLAIM FOR RELIEF

(Violation of California Business and Professions Code § 17200 et seq.)

COMES NOW PLAINTIFF, and for a separate and distinct CLAIM FOR RELIEF for Violation of California Business and Professions Code against Defendants, allege as follows:

121. Plaintiff repeats and repleads paragraphs 1 through 120 and incorporates the allegations by reference therein as though set forth below.

122. Plaintiff is informed and believes and thereon alleges that, at all times herein mentioned, each of the Defendants sued herein was the agent and/or employee of each of the remaining Defendants and was at all times acting within the purpose and scope of such agency and employment.

123. Plaintiff are informed and believe and thereon allege that, by reason of Defendants' fraudulent, deceptive, unfair and other wrongful conduct as herein alleged, said Defendants have violated California Business and Professions Code § 17200 et seq. by consummating an unlawful, unfair and fraudulent business practice, designed to deprive Plaintiff of their equity in said property.

124. By reason of the foregoing, Plaintiff has suffered and continues to suffer damages in a sum which is, as yet, unascertained.

ALL FOR WHICH PLAINTIFF SEEKS DAMAGES AND OTHER RELIEF AS PRAYED

SIXTEENTH CLAIM FOR RELIEF

(Violation of California Civil Code § 2923.6)

1 COMES NOW PLAINTIFF, and for a separate and distinct CLAIM FOR RELIEF for
2 Violation of California Civil Code § 2923.6 against Defendants, allege as follows:

3 125. Plaintiff repeats and repleads paragraphs 1 through 124 and incorporates the
4 allegations by reference therein as though set forth below.

5 126. Plaintiff is informed and believes, and thereon alleges, that at no time during the
6 course of the foreclosure process, nor anytime leading up thereto, was an attempt at a loan modification
7 made by Defendants.

8 127. Defendant OCWEN and/or BANK OF AMERICA HOME LOANS, as a servicer
9 under a pooling and servicing agreement, were required to implement a loan modification plan if said
10 loan was in payment default or default was reasonably foreseeable and where anticipated recovery under
11 the modification exceeds the anticipated recovery through foreclosure.

12 128. As described hereinabove, Plaintiff was unable to make said loan payments as were
13 initially required, but were able to make payments under a modified payment plan, thus allowing them
14 to retain their home and providing the Defendants with a higher recovery than through the foreclosure
15 process.

16 129. Based on the foregoing, Plaintiff is entitled to reasonable attorney's fees and costs as
17 the prevailing party under the loan agreement.

18 ALL FOR WHICH PLAINTIFF SEEKS DAMAGES AND OTHER RELIEF AS PRAYED.

19 **SEVENTEENTH CLAIM FOR RELIEF**

20 **(Violation of California Civil Code § 2923.5)**

21 COMES NOW PLAINTIFF, and for a separate and distinct CLAIM FOR RELIEF for
22 Violation of California Civil Code § 2923.5 against Defendants, allege as follows:

23 130. Plaintiff repeats and repleads paragraphs 1 through 129 and incorporates the
24 allegations by reference therein as though set forth below.

25 131. Plaintiff is informed and believes and thereon alleges that Defendants failed to assess
26 the Plaintiff's financial situation and explore options for Plaintiff to avoid foreclosure, thirty (30) days
27 prior to filing the Default.
28

132. Defendants are required to refrain from filing a Default and proceeding with the foreclosure process until after thirty (30) days has passed from the time they attempted to assess the financial situation of the Plaintiff and attempt a "work out" plan.

133. Further, Defendants were required to reasonably describe any and all due diligence they took in efforts to contact the Plaintiff thirty (30) days before filing the Default.

134. As evidenced in the facts hereinabove, Plaintiff's mortgage was procured between January 1, 2003 and December 31, 2007 and is an owner-occupied residence and thus the principal residence of the borrower.

135. Plaintiff is informed and believe, and thereon allege, that as a result of the conduct of defendants, Plaintiff is entitled to rescind the loan transaction, recover certain amounts already paid, including interest, finance charges and closing costs, offset these damages against amounts owing on the loan, and collect statutory damages and attorney fees.

EIGHTEENTH CLAIM FOR RELIEF

(Violation of California Civil Code § 1632)

COMES NOW PLAINTIFF, and for a separate and distinct CLAIM FOR RELIEF for Violation of California Civil Code § 1632 against Defendants, allege as follows:

136. Plaintiff repeats and repleads paragraph 1 through 135 and incorporate the allegations by reference therein as though set forth below.

137. Plaintiff is informed and believes and thereon alleges that Defendants engage in a trade or business as described in CC § 1632 and negotiate contracts primarily in Spanish, either orally or in writing a, and are required to provide said contracts to be translated into Spanish.

138. Plaintiff's primary language is Spanish and during the course of the loan negotiation no pertinent documents were provided in Spanish.

139. Based on the foregoing violations, Plaintiff is entitled to rescind their contract with Defendants.

ALL FOR WHICH PLAINTIFF SEEKS DAMAGES AND OTHER RELIEF AS PRAYED.

ALL FOR WHICH PLAINTIFF PRAY AS FOLLOWS:

1
2 **On the First Claim for Relief for Intentional Misrepresentation:**

- 3 1. Compensatory damages in an amount in excess of \$500,000, or to be proven at trial;
4 2. General damages in an amount in excess of \$500,000, or to be proven at trial;
5 3. Punitive damages in an amount to be proven at trial;

6
7 **On the Second Claim for Relief for Breach of Fiduciary Duty:**

- 8 1. Compensatory damages in an amount in excess of \$500,000, or to be proven at trial;
9 2. General damages in an amount in excess of \$500,000, or to be proven at trial;
10 3. Punitive damages in an amount to be proven at trial;

11 **On the Third Claim for Relief for Breach of Covenant of Good Faith and Fair Dealing:**

- 12 1. Compensatory damages in an amount in excess of \$500,000, or to be proven at trial;
13 2. General damages in an amount in excess of \$500,000, or to be proven at trial;
14 3. Punitive damages in an amount to be proven at trial;
15 4. Interest according to law;

16
17 **On the Fourth Claim for Relief for Declaratory Relief:**

- 18 1. For a declaration that no money is due defendants by Plaintiff, and the trustee has no right to
19 conduct the trustee's sale because no breach has occurred.
20 2. For a declaration that no tender is required based on the lack of attempt at loan modification by
21 the Defendants.
22

23 **On the Fifth Claim for Relief for Quiet Title:**

- 24 1. Judgment that Plaintiff is the owner in fee simple of the properties and that defendants have no
25 interest in the properties adverse to Plaintiff;
26

27 **On the Sixth Claim for Relief for Violation of Equal Credit Opportunity Act:**

- 28 1. Actual damages in an amount to be proven at trial;

2. Punitive damages in an amount to be proven at trial;

On the Seventh Claim for Relief of Violation of CA Financial Code § 4970:

1. Actual damages in an amount to be proven at trial;
2. Punitive damages in an amount to be proven at trial;

On the Eighth Claim for Relief for Negligence:

1. Compensatory damages in an amount in excess of \$500,000, or to be proven at trial;
2. General damages in an amount in excess of \$500,000, or to be proven at trial;
3. Punitive damages in an amount to be proven at trial;

On the Ninth Claim for Relief for Usury:

1. For a declaration:
- a. That the loan agreement between Plaintiff and Defendants provides for an annual interest rate in excess of that permitted by law;
 - b. That the interest payments Plaintiff has made on the loan from Defendants acted to reduce the principal amount due on that loan;
 - c. That the interest payments Plaintiff has made within the year preceding the filing of this action should be trebled and then credited to payment of the principal amount due on the loan from Defendants;
 - d. That Plaintiff owe no further interest on the obligation to Defendants;
 - e. That Defendants are barred from accelerating or enforcing Plaintiff's obligation to Defendants for Plaintiff's failure to pay interest on the obligation; and
 - f. The amount of principal owing to Defendants as of the date of trial.

On the Tenth Claim for Relief for an Accounting:

1. The court render an accounting between the parties, determining the amount, if any, actually due and owing from Plaintiff.

On the Eleventh Claim for Relief for Violations of TILA and HOEPA:

1. Rescission;
2. Damages;
3. Offset of amounts owing;

On the Twelfth Claim for Relief for Violations of RESPA:

1. Rescission;
2. Damages;
3. Offset of amounts owing;

On the Thirteenth Claim for Relief for Violations of FCRA:

1. Rescission;
2. Damages;
3. Offset of amounts owing;

On the Fourteenth Claim for Relief for Slander of Title:

1. Special damages to be proven at trial;
2. General damages to be proven at trial;

On the Fifteenth Claim for Relief for Violation of CA Bus & Prof Code §17200 et seq.:

1. General damages in an amount to be proven at trial;
2. Special damages in an amount to be proven at trial;

On the Sixteenth Claim for Relief for Violation of CA Civil Code § 2923.6:

1. General damages in an amount to be proven at trial;
2. Special damages in an amount to be proven at trial;

1 **On the Seventeenth Claim for Relief for Violation of CA Civil Code § 2923.5:**

- 2 1. General damages in an amount to be proven at trial;
3 2. Special damages in an amount to be proven at trial;
4 3. Rescission;

5 **On all Claims for Relief:**

- 6 1. Costs of suit;
7 2. Attorneys fees; and
8 3. Such other relief as the court deems just and proper.
9
10
11
12

13 DATED: Sept 14, 2009

KENT C. WILSON

14
15 By: KW
16 Kent C. Wilson
17 Attorney for Plaintiff
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VERIFICATION

I am a Plaintiff in the above entitled action or proceeding. I am a Spanish speaker. The contents of the Complaint have been read to me by a person I trust to translate English into Spanish and Spanish into English. I know the contents of the foregoing document(s) "Complaint" is true of my own knowledge except as to those matters which are stated upon my information and belief and as to those matters I believe to be true. This verification was signed in the City of SAN MARCOS, CA

DATED: SEPT. 11, 2009

Louder m Sanchez
LOURDES SANCHEZ

1 IN THE UNITED STATES DISTRICT COURT
2 IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA
3 LOURDES SANCHEZ an individual v. GREENPOINT MORTGAGE FUNDING, et al.

4 **PROOF OF SERVICE BY MAIL**

5 I declare that I am a citizen of the United States and reside in City of San Diego, State of
6 California. I am over the age of 18 years and not a party to the within case or proceeding. My business
7 address is 943 Imperial Avenue, Suite "G," Calexico, CA 92231 and ONE AMERICAN PLAZA, 600
8 West Broadway, 7th Floor, San Diego, CA 92101.

9 On _____, 2009, I served a true and correct copy of the within document entitled:
10 "COMPLAINT OF LOURDES SANCHEZ " on the parties to this action by causing the above said
11 document(s) to be enclosed in a sealed envelope, postage prepaid, deposited with the U.S. Postal Service
12 addressed as follows:
13
14
15
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17
18
19
20
21
22
23

24 I certify and declare the above to be true under penalty of perjury and that this proof of service is
25 dated _____, 2009, at San Diego, California.

26
27 By: _____
28 Kent C. Wilson
Attorney At Law

PROOF OF SERVICE

JS 44 (Rev. 12/07)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

LOURDES SANCHEZ

DEFENDANTS

GREENPOINT MORTGAGE FUNDING, INC.

(b) County of Residence of First Listed Plaintiff SAN DIEGO

(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant SAN DIEGO

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number)

KENT C. WILSON, ESQ., 943 IMPERIAL AVENUE SUITE G
CALEXICO CA 92231 (760) 357-1193

Attorneys (If Known)

CV 2005 JM

WMC

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- (For Diversity Cases Only)
- | | | | | | |
|---|--------------------------------|--------------------------------|---|--------------------------------|--------------------------------|
| Citizen of This State | PTF <input type="checkbox"/> 1 | DEF <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | PTF <input type="checkbox"/> 4 | DEF <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input checked="" type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTIONCite the U.S. Civil Statute under which you are filing. (Do not cite jurisdictional statutes unless diversity):
15 USC 691 et seq., 15 USC 1601 et seq., 12 USC 2601 et seq., 15 USC 1681 et seq.,

Brief description of cause:

RESPA, TILA Equal Credit Opportunity, Fair Credit Report Act

VII. REQUESTED IN COMPLAINT:☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

9/14

5167

350

9/14/09

Court Name: USDC California Southern
Division: 3
Receipt Number: CAS005167
Cashier ID: sramirez
Transaction Date: 09/14/2009
Payer Name: WILSON ATTY AT LAW

CIVIL FILING FEE
For: SANCHEZ V. GREENPOINT
Case/Party: D-CAS-3-09-CV-002004-001
Amount: \$350.00

CHECK
Check/Money Order Num: 1991
Amt Tendered: \$350.00

Total Due: \$350.00
Total Tendered: \$350.00
Change Amt: \$0.00

There will be a fee of \$45.00
charged for any returned check.